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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/911,385	07/25/2001	Michihiro Uchishiba	500.40386X00	5085
24956	7590	06/17/2005	EXAMINER	
MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C. 1800 DIAGONAL ROAD SUITE 370 ALEXANDRIA, VA 22314			TANG, KENNETH	
			ART UNIT	PAPER NUMBER
			2195	

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/911,385

Applicant(s)

UCHISHIBA ET AL.

Examiner

Kenneth Tang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This action is in response to the Amendment filed on 1/4/05. Applicant's arguments have been fully considered but are moot in view of the new grounds of rejections.
2. Claims 1-6 are presented for examination.

Claim Rejections - 35 USC § 112

3. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention:
 - a. In claim 1, "requesting one of assignment of an additional resource" is indefinite because it is not made explicitly clear in the claim language whether there is a singular or plural assignment. A plurality of assignment s have not been introduced in the claims. In addition, it is also unclear because it is grammatically incorrect.
 - b. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: the monitoring has to consist of identifying whether an additional resource or an unused part of the regular resource exists before storing it in the reserve resource. Claims 2 and 6 are rejected for the same reasons.
 - c. In claim 1, "the collection request" is indefinite because it is not made explicitly clear in the claim language whether this refers to the collection in line 8 or if it also refers to the additional resource of lines 7-8 or neither. In addition, Claim 1 recites the

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limitation "the collection request" in line 15. There is insufficient antecedent basis for this limitation in the claim. Claims 2 and 6 are rejected for the same reasons.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eilert et al. (hereinafter Eilert) (US 6,587,938 B1) in view of Okazawa et al. (hereinafter Okazawa) (US 6,378,021 B1).

5. As to claim 1, Eilert teaches a method for automatically imparting a reserve resource to a logical partition in a logical partitioned computer system in which one or more logical partitions are provided in one physical computer, and an operating systems is operated in each of the logical partitions (*col. 4, lines 18-37*), comprising the steps of:

Monitoring, by each said logical partition, an amount of a resource being used in an amount of a regular resource being assigned to each of the logical partitions, and requesting one of assignment of an additional resource or collection of an unused part of the regular resource to

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said physical computer on the basis of a result of monitoring (*col. 25, lines 60-62, col. 18, lines 45-50, col. 4, lines 18-37*); and

It was already shown that Eilert teaches providing each logical partition with its own operating system to monitor and manage operations and assigning reserve resource to logical partitions (*col. 1, lines 48-56, col. 4, lines 18-37, col. 17, lines 21-22, col. 18, lines 45-50*). Eilert fails to explicitly teach said physical computer upon receipt of the request to store the unused part of the regular resource being assigned to the logical partition to a reserve resource in the case of the collection request, and to assign a resource stored in the reserve resource as the additional resource to the logical partition in the case of the assignment request. However, Okazawa teaches preparing (storing extra) in advance in a standby partition, and when ready and upon request, to switch the standby partition to an active partition (*col. 2, lines 4-52, etc.*). The standby partition is required to prepare additional system resources. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the preparing (storing extra) in advance in a standby partition, and when ready and upon request, to switch the standby partition to an active partition to the existing reserve resource to a logical partitioned computer system because this would improve system reliability (*col. 2, lines 4-52*).

6. As to claim 2, it is rejected for the same reasons as stated in the rejection of claim 1. In addition, Eilert teaches a means to provide adding or separating (adjusting) of the resource being monitored a the partitions (*col. 8, lines 53-67, col. 9, lines 21-40, and Abstract, etc.*).

7. As to claim 3, it is rejected for the same reasons as stated in the rejections of claim 2.

8. As to claim 4, it is rejected for the same reasons as stated in the rejection of claim 1. However, Eilert fails to explicitly teach having a data table for the logical partitions. "Official Notice" is taken that both the concept and advantages of providing that data table for the logical partitions is well known and expected in the art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include data table for the logical partitions to the existing system of Eilert because this increases the organization of the system by having a structure to hold and access the data.

9. As to claim 5, it is rejected for the same reasons as stated in the rejections of claim 2.

10. As to claim 6, it is rejected for the same reasons as stated in the rejections of claims 1 and 4.

Response to Arguments

11. During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. *In re Prater*, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969).

12. *Applicant argues in the Remarks on pages 8-10 that Eilert does not teach that the operations from the operating system is not being performed by each partition.*

In response, the Examiner respectfully disagrees. Eilert teaches that each logical partition can be loaded with its own operating system (*col. 1, lines 48-56*).

13. Applicant's other arguments have been fully considered but are now moot in view of the new grounds of rejections.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- a. Greenspan et al. (US 5,893,157) teaches managing resources that are allocated in logical partitions.
- b. Maergner et al. (US 2003/0065835 A1) also teaches managing resources that are allocated in logical partitions.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Tang whose telephone number is (571) 272-3772. The examiner can normally be reached on 8:30AM - 6:00PM, Every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kt
6/12/05


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